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Members of the Disability Initial Claims Committee & Retirement Board
Bert Bell/Pete Rozelle NFL Player Retirement Plan
200 Saint Paul Street Suite 2420
Baltimore, MD 21202

NFL PLAYER BENEFITS

Thank you for the opportunity to provide more clear and convincing evidence that Andre T. Royal met the qualifications and should have been classified in the Active Football Benefits category.

There are 3 things that have to be shown to determine if a player meets the Active Classification.

1. Did the disability result from league football activities?
2. Did the disability arise while the player is an active player?
3. Did the disability cause the player to be totally and permanently disabled within 12 months of when the disability arises?

The definition of total and permanent disability as well as when Andre's total and permanent disability began are also important because in the case of NFL players; it is possible for a player to continue to try to perform their duties due to contractual obligations; lack of a complete diagnosis by team doctors, and due to incomplete information available at that time about head injuries to the NFL and to players.

The question then becomes should a totally and permanently disabled player who relies on the team physicians and their recommendations; be further penalized if he was contractually obligated and attempted to play professional football at their advice?

1. Did the disability result from league football activities?
It has been previously determined by several neurologists including: Dr. James A. Smith; board certified neurologist, Dr. Richard Hamer; Dr. Ronald Folmer; and neutral neurologist for this committee, Dr. Steve Putman ⁽¹⁾ that Andre's disability was caused by league football activities.

2. Did the disability arise while the player is an active player?

5.3 **Classification. Active Football.** Subject to the special rules of Section 5.4, Players will qualify for benefits in this category if the disability(ies) results from League football activities, arises while the Player is an Active Player, and causes the Player to be totally and permanently disabled "shortly after" the disability(ies) first arises.

Andre began to experience a substantial disablement during the 1999 NFL season until his release on October 11, 1999. He was paid through the end of the 1999-2000 season based on the terms of his contract.

This would make him "Active" within the period beginning when his last such

contract expired or was terminated for any reason, and ending on the later of (a) the July 15 following the beginning of the period, or (b) the first day of pre-season training camp.

Attached is a copy of Andre's NFL Player Contract with Guarantees ⁽²⁾ covering the seasons 1998; 1999; 2000; & 2001. This contract was tendered by the New Orleans Saints and Assigned to the Indianapolis Colts ⁽³⁾ in its first contract year.

This contract shows that Andre Royal was an Active Player within the following language of the plan when he no longer became able to perform his duties as an NFL football player due to total and permanent disability arising from league football activities.

3. Did the disability cause the player to be totally and permanently disabled within 12 months of when the disability arises?

Andre Royal played in a preseason football game less than a month after his first seizure. He had his second seizure after playing in that game while traveling from Denver on a team plane on August 15, 1998. ⁽⁴⁾

Doctor reports from the period directly after Andre's first seizures ⁽⁵⁾ point to the same treatments, precautions and exclusions from activities that doctor reports did while he played ⁽⁶⁾ and after he left the NFL. ⁽⁷⁾

Records for the Saints ⁽⁸⁾ and Colts ⁽⁹⁾ show that they were aware of Andre's neurological disability and still required him to play football as evidenced by the fact that he was not placed on injured reserves for the symptoms he was experiencing.

Andre's disability has been total and permanent from the start. The fact that Andre continued to try to perform as an NFL player does not detract from the point that he was still substantially disabled and should not have been attempting to perform his duties as an NFL linebacker soon after the second seizure.

Was it possible for Andre to be totally and permanently disabled while employed as an NFL Linebacker?

In 2007, the Georgia Court of Appeals had to address this question in *Pomerance v. Berkshire Life Insurance Company of America*. 654 S.E.2d. 638 (2007).

"Substantial" can have a *qualitative* meaning and be defined as "important" or "essential", meaning that the insured is totally disabled if he cannot perform his *important* and material duties; or

“Substantial” can have a *quantitative* meaning and be defined as “considerable in quantity” or “significantly great” in amount, meaning that an insured is totally disabled if he cannot perform *a significantly great amount of* his material duties.

The Federal Government uses the following example of an employee with total and permanent disability to describe circumstances similar to those that an NFL player might experience.

Example 3: <http://www.irs.gov/pub/irs-pdf/i1040sr.pdf>

John, who retired on disability, took a job with a former employer on a trial basis. The purpose of the job was to see if John could do the work. The trial period lasted for some time during which John was paid at a rate equal to the minimum wage.

But because of John's disability, he was given only light duties of a nonproductive, make-work nature. Unless the activity is both substantial and gainful, John is not engaged in a substantial gainful activity. The activity was gainful because John was paid at a rate at or above the minimum wage. However, the activity was not substantial because the duties were of a nonproductive, make-work nature.

In the case of a professional football player, the Colts had contractual amounts they were obligated to pay to Andre regardless of injury. Therefore the activity was gainful.

However Andre's duties and performance were substantially reduced as reported by Colts officials, and as evidenced by his release while 2 years into a 4 year contract ⁽¹⁰⁾ and were of a nonproductive make work nature due to the disablement and so his duties were not substantial.

Therefore based on the IRS example above, Andre's work was not both gainful and substantial. This means that Andre was totally and permanently disabled; although actively playing football just as in the case of John above who was totally and permanently disabled although attempting to work.

A report dated April 11, 2013 from Dr. Michael Wells also summarizes how a player could be totally and permanently disabled and continue to work. Dr. Wells is a Qualified Medical Evaluator.

His professional opinion attached ⁽¹¹⁾ is only offered as it relates to the matter of playing disabled although he did evaluate Andre's records as well as game film to determine whether dental, head or jaw trauma had occurred to Andre.

On page 3 of his report, Dr. Wells writes:

Just because the applicant failed to report his injuries and the team physicians failed to document these minor head injuries seen on film, doesn't mean the applicant did not sustain injuries to his jaw and head.

The doctor goes on to explain:

Another reason why players fail to report injuries is that an NFL player's definition of an injury is: the inability to perform on the field despite the aid of pads, medications, braces and tape.

Most head injuries do not prevent players from going back out on the field and exposing themselves to even more harm.

... We may never know how many secondary injury was caused to players who were sent back out on the field after head trauma with or without an exam.

For Example: A player suffered a head injury and is examined on the sidelines. He is given smelling salts, a vision test, and asked a few questions in order to check him for head injuries. Then after all the sideline exams he is then asked by the doctor... "Can you play?" With all the doctors around the player they ask to diagnose himself with his injuries and further expose his head to more traumas by sending them back into the game.

Even if a player tries to hide his injuries it is the team's obligation to take a thorough evaluation during or at the end of the season in order to discover them." ⁽¹¹⁾

Based on case law, the IRS example above and the professional opinion provided; which was supported by Steve Putman the neutral neurologist when he stated Andre was totally and permanently disabled and his injuries were caused by professional football; it is possible for a player to be totally and permanently disabled but continue to try to perform their duties for many reasons including: contractual obligations; lack of a complete diagnosis by team doctors, and incomplete information available at that time about head injuries to the NFL and to players.

Discharge instructions ⁽¹²⁾ from the hospital provided to the Indianapolis Colts dated 8/15/1998 and consistent with discharge orders on 7/23/98 ⁽¹³⁾ show that Andre's seizure medication 5- 100 mg tablets every evening were to be "delivered to training room" each day. They also read: "No driving, working at heights or with dangerous machinery."

Andre was taken to the hospital less than a month after his first seizure; because he suffered a second seizure mid-air on a team plane witnessed by team doctors, coaching staff, trainers and the members of the Indianapolis Colts ⁽⁴⁾ following a game in which he had just actively played.

The orders from Gunderson Lutheran Hospital on 8/15/1998 ⁽⁵⁾ show that Andre was substantially disabled from football activities and should not have been on the football field actively performing his duties as an NFL linebacker.

During the 1999-2000 Season Andre had symptoms which included:

Seizures, severe headaches, confusion, loss of awareness, incontinence, inability to

concentrate, memory loss, insomnia, mood swings; “grogginess”, several bitten tongues, emotional outbursts, dizziness, waking up in different rooms from seizure state unaware of what happened, nightmares, whole body shaking, word finding difficulty and loss of balance; all of which were reported to medical personnel.

The slower reaction times and “feeling drugged” from the medication as well as the symptoms above led to Andre’s decreased performance on the field as well as multiple major and minor on the field football injuries.

6.4 (a) (3) gives the plan’s definition of substantial disablement as a permanent disability that is the primary or contributory cause of the surgical removal or major functional impairment of a bodily organ or part of the central nervous system.

We now know based on information from the medical community, the NFL; experts on CTE and other sources that concussions and head injuries can cause serious permanent neurological injuries and disabilities in NFL players.

Based on the definition above, Andre would also have been considered substantially disabled in the 1998 Season and should not have returned to football.

By December 1998 Andre’s medical diagnosis had changed from New Onset Seizure to Seizure Disorder at which time he was medically totally and permanently disabled according to the attached medical records summarized by Dr. Prakash Jay, MD. ⁽⁷⁾

Because there are several months off between seasons its’ impossible to know if there would have been the ability to perform during the off months of January 1999- June 1999 when he wasn’t playing; similar to the IRS example given above where the disabled employee attempted to return to work for a short period of time after leaving due to the disability.

This board has the benefit of information and hindsight the 2001 board hearing Andre’s case didn’t have. Medical experts know that Andre continuing to play professional football for even a short period of time aggravated the injuries to his brain that he sustained while playing in the NFL and was the worst thing to do with evidence of a serious head trauma.

Having a seizure 30,000 feet in the air after a game and witnessed by team officials is clear evidence of head trauma.

An unintentional precedent could be set if a team doesn’t have full medical information or misinterprets that information and intentionally or unintentionally prolongs the play of an athlete (at the risk of greater impairment or death to that athlete) due to contractual obligations. A player being denied the proper classification of benefits would be a minor consequence compared to more serious ones that could result.

The Federal government has established guidelines to ensure that doesn’t occur according to the example above.

"In cases falling within this six- to twelve-month period, the Retirement Board or the Disability Initial Claims Committee will have the right and duty to determine whether the "shortly after" standard is satisfied."

A duty is a responsibility or an obligation to answer for an act done, and to repair any injury it may have caused. This Committee has been empowered to carry out this duty by section 8.2:

The Retirement Board will have full and absolute discretion, authority and power to interpret, control, implement, and manage the Plan and the Trust. Such authority includes, but is not limited to, the power to:

- (a) Define the terms of the Plan and Trust, construe the Plan and Trust, and reconcile any inconsistencies therein;

8.8 Duty of Care. The Retirement Board and the Disability Initial Claims Committee will discharge their duties with respect to the Plan and Trust solely and exclusively in the interest of the Players and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

8.9 Discretionary Acts. Benefits under this Plan will be paid only if the Disability Initial Claims Committee, or the Retirement Board, or a designee of either, decides in its discretion that the applicant is entitled to them.

In exercising their discretionary powers under the Plan and Trust, the Retirement Board and the Disability Initial Claims Committee will have the broadest discretion permissible under ERISA and any other applicable laws, and their decisions will be binding upon all persons affected thereby.

In deciding claims for benefits under this Plan, the Retirement Board and Disability Initial Claims Committee will consider all information in the Player's administrative record, and shall have full and absolute discretion to determine the relative weight to give such information.

We are appealing to this body to redress the misclassification of Andre Royal's disability benefits due to the neurological damage and disability he sustained as an Active NFL player in light of all the evidence available and to consider the cost of his future neurological treatments and care for seizures and neurological disabilities which were caused by his position as an NFL Linebacker for 5 seasons.

Andre's care and treatment have been negatively impacted by the high cost of neurological healthcare and prescription medication that he must take daily the rest of his life as well as the high cost, over \$2000 per month, to ensure him.

Andre recently had to cancel an appointment with a new neurologist that he had waited 2 months for because of the cost of the additional tests needed in addition to the regular appointment costs.

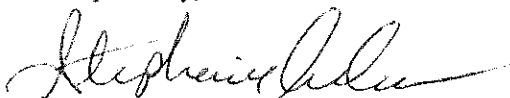
We believe that the 2001 members of the board determined Andre T. Royal's classification in error and with incomplete information about head injuries that now exists and is available to this committee.

- a. That section 5.7 (b) does not apply as it relates to the 42 month limitations because Andre's circumstances didn't change; they were evaluated in error, by the 2001 Retirement Board;
- b. because the limitations caused by his disability interfered with the filing of such claim;
- c. and because the language used implied that Andre had been classified correctly from the Inactive to the Football Degenerative classification⁽¹⁴⁾ with no mention of Active or Inactive categories within this classification prior to 2011.⁽¹⁵⁾

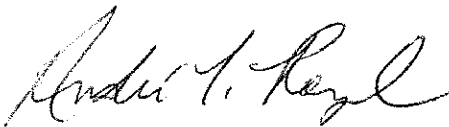
We are appealing to the current members of the board to repair the injury that error has caused and reclassify Andre Royal's benefits to Total and Permanent Active Football and award him back benefits as such.

Andre had the courage to walk away from a playing career for the sake of his health 4 months after the 1999-2000 season ended and officially retire from the National Football League.⁽¹⁶⁾ A 28 year old man living his dream doesn't do that unless he knows that he is totally and permanently disabled and continuing to play will jeopardize his health and maybe even his life.

Respectfully,



Stephanie Anderson, MSM



Andre T. Royal